THE RIGHT TO REMOVE TRADE FIXTURES ANNEXED BY ONE NOT THE OWNER OF THE FEE. — It has been recently decided in Massachusetts that the rails of a street railway company are personalty and go to a conditional vendor rather than to a subsequent mortgagee of the company's property.[1] *Lorain Steel Co.* v. *Norfolk, etc., St. Ry. Co.*, 73 N. E. Rep. 646 (Mass.). The case was distinguished from that of a steam railroad, the rails of which are held realty, upon the ground that a street railway company has no easement or other interest in the land.[2] This decision illustrates the general tendency of the courts to confuse two distinct questions; viz., whether the chattels have become fixtures, and whether they are removable. Whether they have become a part of the realty depends upon the objective intention of the party affixing, to be ascertained by examining the intimacy of their connection with the soil, the amount of damage to them or to the land which would be caused by removal, and their adaptability to the use to which the premises are devoted. The actual intention of the person annexing and his relation to the land bear only upon the question of removability.[3] Where such party has no permanent interest in the land, the right of removal would seem to rest upon an implied agreement with the landowner; for while a lessee or licensee may sever,[4] a trespasser has no such privilege.[5] Moreover this right of severance, implied from the license to occupy the land, seems incident to, and inseparable from, such right of occupation; for it must be exercised by the lessee before the end of his term,[6] and it passes to an assignee or mortgagee of the leasehold.[7]

As between a conditional vendor and a tenant, articles annexed under the agreement of sale should go to the former, not because the agreement has prevented their becoming fixtures, but because the tenant is under a contractual obligation to allow his right of removal to be exercised by the vendor. The contract is, in effect, to give security, and should therefore be specifically enforceable in equity.[8] But when the tenant assigns or mortgages his right to occupy the land, the right to sever passes to his assignee and the vendor's right is cut off at law. A court of equity, however, should enforce it against a transferee of the tenant who has notice or has not parted with value in reliance upon the presence of the fixture on the land. Thus subsequent transferees with notice and prior encumbrancers should be postponed to the conditional vendor.[9]

WRONGFUL SALE OR RE-PLEDGE BY A PLEDGEE. — Whether a pledgee who wrongfully sells or re-pledges his security, in excess of his authority, is

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[1] Hart *v.* Benton-Bellefontaine Ry. Co., 7 Mo. App. 446, *contra.* See Readfield, etc., Co. *v.* Cyr, 95 Me. 287; American Union Telegraph Co. *v.* Middleton, 80 N. Y. 408.

[2] Hunt *v.* Bay State Iron Co., 97 Mass. 279.

[3] In the majority of jurisdictions chattels annexed by a tenant for purposes of trade are considered parts of the realty, though removable by the tenant. *Cf.* Gibson *v.* Hammersmith Ry. Co., 32 L. J. Ch. 337; Bliss *v.* Whitney, 9 Allen (Mass.) 114.

[4] Gibson *v.* Hammersmith Ry. Co., *supra;* Bliss *v.* Whitney, *supra.* See Barnes *v.* Barnes, 6 Vt. 388, 394.

[5] Van Size *v.* Long Island R. R. Co., 3 Hun (N. Y.) 613.

[6] *Cf.* Watriss *v.* First National Bank of Cambridge, 124 Mass. 571.

[7] *Ex parte* Astbury, L. R. 4 Ch. 630.

[8] See Hermann *v.* Hodges, L. R. 16 Eq. 18.

[9] *Cf.* Davenport *v.* Shants, 43 Vt. 546; Brennan *v.* Whitaker, 15 Oh. St. 446. *Contra,* Ford *v.* Cobb, 20 N. Y. 344; Clary *v.* Owen, 15 Gray (Mass.) 522.